

THE INJURIOUS INTERSTATE

LAWRENCE SAVELL

Prior installments of this column have discussed unfortunate cases where collector cars (and their owners) have been damaged in accidents. Owners seeking reimbursement for such losses often attempt (where warranted) to hold responsible the other driver (if there was one) or the manufacturer of their automobile. But what if the physical injuries and/or vehicle damage were caused in whole or part or exacerbated by the design or condition of the roadway where the accident occurred? Can you hold the government entity that constructed and/or maintained a highway liable for negligence?

The case of *Goodermote v. Tennessee*, decided February 24, 1993 by the Court of Appeals of Tennessee, at Nashville, addressed such questions.

Scott Goodermote was riding with a fellow member of the United States Air Force in the latter's 1973 Ford Maverick. They were heading east on Interstate 24 on their way to a base in Florida. Ironically, while going through Coffee County, Tennessee, the driver apparently fell asleep. The Maverick went off the left side of the roadway, and entered the 64-foot wide, downward-sloped grass median. It traveled there for approximately 700 feet to a point where the Interstate split into twin bridges 61.25 feet apart, with the median leading into a 28-foot embankment between them. The car continued down the embankment, crashing into the street below. The Maverick was severely damaged and its occupants were seriously injured.

Goodermote sued the State for his injuries, claiming that Tennessee was negligent in its planning, design, construction, and maintenance of the highway. Specifically, he claimed that the State should have installed a guardrail, earthen berm, or other safety mechanism across the opening between the bridges to stop cars traveling in the median from going down the embankment.

Goodermote's case was strengthened by several facts. There had been prior similar accidents at or near that location, and the State had notice of at least some of these (including one where two motorists died). National statistics demonstrated that vehicles would periodically leave a roadway and enter the space between bridges under such circumstances. The State's original plans for the highway had called for guardrails or earthen berms to be placed across the opening between the twin bridges. Similarly, the industry standard in effect at the time of construction was to place guardrails across such an opening. There was also evidence that Goodermote's injuries would have been far less severe had the Maverick hit a guardrail at the end of the median rather than accelerating down the embankment and crashing into the street below.

Nevertheless, the Tennessee Claims Commission dismissed Goodermote's petition. On appeal, however, the Court of Appeals reversed, ruling that the State was negligent and thus liable to Goodermote.

The court noted that Tennessee had a duty to persons lawfully traveling upon its highways to exercise reasonable care in planning, designing, constructing, and maintaining those roads. It concluded that the State's failure to follow its own plans and industry standards calling for a safety device across the opening fell below the required standard of care and reasonable conduct in light of the apparent risk. Thus, the State had breached its duty to Goodermote.

The court also found that the absence of a safety device was the legal cause of Goodermote's injuries. Although the driver's falling asleep contributed to the accident, this did not bar the State's negligence from being considered the cause (or at least one of the causes). Moreover, the court found that the State could reasonably have foreseen that a driver would fall asleep and that a car would leave the roadway.

It also ruled that Goodermote had established that a "dangerous condition" existed at the location which the State had created and/or maintained. The court reached such a determination by considering the physical aspects of the roadway, the frequency of accidents at the location, and the testimony of expert witnesses. It noted that, despite the occurrence and awareness of prior accidents, the State had not taken any measures to correct the hazardous condition.

The Court of Appeals therefore sent the case back to the Claims Commission for a hearing on the amount of damages to which Goodermote was entitled. Although the State applied for permission to appeal the court's decision, the Tennessee Supreme Court on June 1, 1993 denied the application.

Years ago, claims against a state (or the federal government or a city or town) such as those discussed here would probably not have been allowed due to "sovereign immunity." This legal doctrine, a relic from times when and lands where kings were deemed "to do no wrong" and were thus immune from suit, precludes litigants from asserting otherwise meritorious claims against the government. Fortunately, like Tennessee, many modern jurisdictions have, to varying degrees and with certain limitations and restrictions, *waived* such immunity, allowing injured persons to seek relief.

Lawrence Savell is an attorney with the law firm of Chadbourne & Parke in New York City. This column provides general information and cannot substitute for consultation with a lawyer.

